

FACTUAL HISTORY

On September 10, 2009 appellant, then a 40-year-old city carrier, filed a traumatic injury claim alleging that on August 14, 2009 he sustained severe stress and loss of mental concentration due to a hostile environment and discrimination by his supervisor.² He alleged that Carol Jones, his manager, used threats and intimidation to obtain greater productivity from him.³

In a September 9, 2009 report, Gerard E. Boutin, Ph.D., a treating clinical psychologist, diagnosed post-traumatic stress disorder and major depression which he attributed to conflict with appellant's supervisor and harassment at work. He stated he reviewed appellant's statements and those of his union representative, John Wenk.

In an undated statement, appellant related that a disciplinary meeting was held on August 14, 2009 with his customer service supervisor, Phyllis Dean and Tom Phillips, a union representative. Ms. Dean gave him a letter of warning to read that he refused to sign. Appellant related that during the meeting Ms. Jones walked in and advised him "to be more compassionate towards Ms. Dean by coming to work when scheduled." He advised her of his chronic back and neck conditions which prevented regular attendance and that he had approved leave under the Family and Medical Leave Act. Appellant alleged that Ms. Jones began screaming at him concerning a July failed signature confirmation which he contended did not involve him. He informed Mr. Phillips that he was leaving while Ms. Jones continued to scream at him. Ms. Jones informed appellant that medical documentation would be required prior to his return to work.

The Office also received an undated statement from Ms. Dean regarding the August 14, 2009 disciplinary meeting. At the meeting on August 14, 2009, Ms. Dean read the letter of warning regarding appellant's irregular attendance aloud to him and that he refused to sign it. She informed both appellant and Mr. Phillips that Ms. Jones would like to talk to them. According to Ms. Dean, Ms. Jones stated in a calm and professional manner that no corrective action would be taken due to appellant's health for his failure to secure a signature in July. Appellant interrupted Ms. Jones to state that he did not deliver the parcel. Ms. Dean stated Mr. Phillips was rude to Ms. Jones in that would not let her speak. She stated that both appellant and Ms. Jones were condescending and disrespectful during the meeting. Appellant informed Mr. Phillips that he was going home as he had had enough.

² This was assigned claim File No. xxxxxx018.

³ Appellant filed two other traumatic injury claims on September 10, 2009. These claims involved injuries sustained on separate days. Appellant indicated that he wanted these claims to be treated as separate traumatic injuries. He alleged that on August 19, 2009 his severe stress, anger, anxiety, conflict and loss of mental concentration was a result of racial and disability discrimination and harassment by Postmaster Racine when he refused to drop a pending Equal Employment Opportunity claim. Appellant filed another traumatic injury claim alleging that on September 2, 2009 he suffered depression, anxiety and loss of concentration due to Ms. Jones' singling him out and harassing him about a Form CA-17 submitted on April 21, 2009. The Office assigned claim File Nos. xxxxxx019 and xxxxxx020.

On September 18, 2009 the Office informed appellant that the evidence was insufficient to support his claim and requested additional medical and factual evidence.

The Office received medical and factual evidence including statements from Mr. Phillips and Ms. Jones regarding the August 14, 2009 meeting. In an August 15, 2009 statement, Mr. Phillips stated he attended a disciplinary meeting for appellant on August 14, 2009 with Ms. Dean. He alleged that Ms. Jones harassed appellant about prior incidents, pointed her finger at him, raised her voice while talking to appellant and told him to shut up. Mr. Phillips stated she told appellant to shut up and demanded he leave when he attempted to stop an alleged assault on appellant.

In an undated statement, Ms. Jones denied that she yelled at appellant and became upset or displayed any threatening behavior during the August 14, 2009 meeting with him and Mr. Phillips. As she came into the meeting, she informed him and Mr. Phillips that she briefly wanted to discuss an investigative memorandum concerning appellant's failure to obtain a customer signature on a signature confirmation form. Ms. Jones stated that appellant interrupted her by saying he did not deliver the parcel in question and she stated that no action was being taken. She also stated "your supervisor is treating you very fair and that is all we ask in return." At this point, appellant shouted at Ms. Jones that he did not deliver the parcel in question. Ms. Jones informed him that based on the reports they had for the day, he was the only person involved in deliveries and she supported his supervisor's decision. Mr. Phillips then rudely interrupted by saying he did not approve of the conversation and directed her to stop talking as "[she] had no business talking to [appellant]. Ms. Jones stated that he spoke over her and would not let her speak. Appellant then got up to leave and went home because he was sick.

By decision dated October 28, 2009, the Office denied appellant's claim that he sustained an emotional condition due to alleged discrimination and hostile work environment on August 14, 2009.

On November 16, 2009 appellant requested an oral hearing before an Office hearing representative and a telephonic hearing was held on March 4, 2010. He testified that at the August 14, 2009 meeting Ms. Jones "basically started frothing at the mouth yelling at [him]" while telling him to be more considerate of his supervisor. Appellant denied being rude to Ms. Dean and Ms. Jones as he was afraid due to his low productivity and pending letter of warning. He left the meeting, filled out forms that he was going home sick, went to his doctor and returned the next day.

Following the telephonic hearing, the Office received additional factual evidence including statements from Arnold Hall, Ralph Mezzei, a supervisor and Steve G. Reddy, a custodian. An April 2, 2010 letter from Ms. Jones provided comments on the hearing transcript. An April 19, 2010 response from appellant addressed the employing establishment's comments. Both Mr. Hall and Mr. Reddy state that they have never observed Ms. Jones yelling at employees. Mr. Mezzei alleged that he overheard a meeting with appellant in which he started yelling in a menacing tone and that he subsequently came out saying he was leaving because of stress.

In the April 2, 2010 letter, Ms. Jones denied appellant's hearing testimony regarding intimidation and harassment due to his low productivity. She stated that discussions with him concerned his irregular work attendance and that his work productivity was not topic of any discussions.

Appellant, in an April 19, 2010 letter, disputed Ms. Jones' comments on his testimony. He contended that his performance standards were not normal due to his disabilities and that case resulted from the use of illegal tactics by Ms. Jones to obtain greater productivity from him. Appellant denied any unprofessional work behavior on his part and that management routinely violated employing establishment regulations and continued a hostile work environment.

By decision dated May 18, 2010, an Office hearing representative affirmed the Office's October 28, 2009 decision.⁴

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁷ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸ In determining whether the employing establishment has erred or acted abusively, the Board will

⁴ The Board notes that, following the May 18, 2010 Office hearing representative's decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

⁵ 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ See *William H. Fortner*, 49 ECAB 324 (1998).

examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of the Act. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹⁰ Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.¹⁶

ANALYSIS

Appellant did not attribute his emotional condition to his regular or specially assigned duties under *Cutler*.¹⁷ Rather, he attributed his condition to the meeting with Ms. Jones and Ms. Dean on August 14, 2009. Appellant's primary allegations are that he was threatened, falsely accused of failing to get a signature on a parcel delivery and harassed about his performance when he had a leave approved under the Family and Medical Leave Act. The Board finds that he did not establish a compensable factor of employment.

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004); *S.M.*, Docket No. 09-2290 (issued July 12, 2010).

¹¹ *Jeral R. Gray*, 57 ECAB 611 (2006); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

¹² *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 12.

¹⁵ *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003); *G.S.*, Docket No. 09-764 (issued December 18, 2009).

¹⁶ *Robert Breeden*, *supra* note 12; *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ 28 ECAB 125 (1976).

The record establishes that Ms. Dean had a meeting with appellant and Mr. Phillips on August 14, 2009, concerning a letter of warning about his irregular attendance. The record further establishes that Ms. Jones discussed with appellant a failure to get a signature on a July delivery. Appellant alleged during that meeting Ms. Jones screamed at him about his work performance. In support of his claim, he submitted a statement from Mr. Phillips supporting appellant's allegation that Ms. Jones screamed at him, harassed him and pointed her finger at him during the meeting. However, the record also contains statements by Ms. Jones and Ms. Dean denying that Ms. Jones screamed at appellant, harassed him or threatened him about his work performance. The Board has recognized the compensability of verbal abuse as a compensable work factor but not every statement uttered in the workplace will give rise to compensability.¹⁸ While appellant and Mr. Phillips allege Ms. Jones screamed and threatened him, Ms. Jones and Ms. Dean deny any screaming or threats by Ms. Jones. The statements by Mr. Hall and Mr. Reddy, while supportive of Ms. Jones, are not relevant to the August 14, 2009 meeting as no date was mentioned by either of them and they just state they have never heard Ms. Jones scream at any employee. While Mr. Mezzei references overhearing appellant yelling at a meeting and then going home because he was stressed, Mr. Mezzei does not note the date of the meeting he overheard. The Board finds that Ms. Jones did not threaten appellant about his work performance or scream at him as the record contains conflicting evidence from the participants at the August 14, 2009 meeting regarding the allegations of screaming at and threatening him and there are no other witness statements supporting his allegations.

The Board finds that appellant has failed to submit sufficient evidence to establish that Ms. Jones otherwise engaged in harassment, as alleged. Appellant's assertions that Ms. Jones harassed him about his work performance are contradicted by Ms. Dean and Ms. Jones. They both noted that the purpose of the August 14, 2009 meeting was to discuss the letter of warning for his use of unscheduled leave and was not to discuss any work performance issues. As such, appellant's allegations are not substantiated by the record.

The Board finds that the evidence of record does not establish that the administrative and personnel actions taken by management were in error and are therefore not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹⁹ Appellant has not presented sufficient evidence that the Ms. Dean acted unreasonably or committed error with regards to the issuance of the letter of warning for irregular attendance and holding the meeting.

CONCLUSION

The Board finds that appellant did not establish that he sustained an emotional condition in the performance of duty.

¹⁸ *David W. Shirey*, 42 ECAB 783 (1991).

¹⁹ *Jeral R. Gray*, *supra* note 11; *G.S.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Program dated May 18, 2010 is affirmed.

Issued: May 23, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board